

AMENDED IN SENATE MAY 19, 2015
AMENDED IN SENATE APRIL 23, 2015
AMENDED IN SENATE MARCH 19, 2015

SENATE BILL

No. 196

**Introduced by Senator Hancock
(Coauthor: Senator Stone)**

February 10, 2015

An act to amend, repeal, and add ~~Section~~ *Sections 15610.07 and 15657.03* of the Welfare and Institutions Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 196, as amended, Hancock. Elder abuse: protective orders.

Existing law authorizes a court to issue a protective order to restrain any person for the purpose of preventing the abuse of an elder or dependent adult. Under existing law, certain persons are authorized to file a petition for these protective orders on behalf of the elder or dependent adult, including a conservator or trustee, an attorney-in-fact, a person appointed as a guardian ad litem, or other person legally authorized to seek the order.

This bill would, commencing July 1, 2016, additionally authorize a county adult protective services agency ~~and a public conservator~~ to file a petition for a protective order on behalf of an elder or dependent adult ~~if the elder or dependent adult has been identified as lacking capacity and a conservatorship is being sought.~~ *who, among other things, has suffered abuse and has an impaired ability to appreciate and understand the circumstances that place him or her at risk of harm, or if the elder or dependent adult has provided written authorization for the agency to act on his or her behalf.* The bill would require the adult protective

services agency or public conservator to provide a copy of the petition, a notice of the hearing, and any supportive declarations to the elder or dependent adult at least 5 days before the hearing, and to make reasonable efforts to assist the elder or dependent adult to attend the hearing and provide testimony to the court. *The bill would also recast and clarify the definition of “abuse of an elder or a dependent adult.”*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 15610.07 of the Welfare and Institutions*
2 *Code is amended to read:*
3 15610.07. (a) “Abuse of an elder or a dependent adult” means
4 either of the following:
5 ~~(a)~~
6 (1) Physical abuse, neglect, financial abuse, abandonment,
7 isolation, abduction, or other treatment with resulting physical
8 harm or pain or mental suffering.
9 ~~(b)~~
10 (2) The deprivation by a care custodian of goods or services
11 that are necessary to avoid physical harm or mental suffering.
12 (b) *This section shall become inoperative on July 1, 2016, and,*
13 *as of January 1, 2017, is repealed, unless a later enacted statute,*
14 *that becomes operative on or before January 1, 2017, deletes or*
15 *extends the dates on which it becomes inoperative and is repealed.*
16 *SEC. 2. Section 15610.07 is added to the Welfare and*
17 *Institutions Code, to read:*
18 15610.07. (a) “Abuse of an elder or a dependent adult” means
19 any of the following:
20 (1) Physical abuse, neglect, abandonment, isolation, abduction,
21 or other treatment with resulting physical harm or pain or mental
22 suffering.
23 (2) The deprivation by a care custodian of goods or services
24 that are necessary to avoid physical harm or mental suffering.
25 (3) Financial abuse, as defined in Section 15610.30.
26 (b) *This section shall become operative on July 1, 2016.*
27 ~~SECTION 1.~~
28 *SEC. 3. Section 15657.03 of the Welfare and Institutions Code*
29 *is amended to read:*

1 15657.03. (a) (1) An elder or dependent adult who has suffered
2 abuse as defined in Section 15610.07 may seek protective orders
3 as provided in this section.

4 (2) A petition may be brought on behalf of an abused elder or
5 dependent adult by a conservator or a trustee of the elder or
6 dependent adult, an attorney-in-fact of an elder or dependent adult
7 who acts within the authority of the power of attorney, a person
8 appointed as a guardian ad litem for the elder or dependent adult,
9 or other person legally authorized to seek such relief.

10 (b) For the purposes of this section:

11 (1) "Conservator" means the legally appointed conservator of
12 the person or estate of the petitioner, or both.

13 (2) "Petitioner" means the elder or dependent adult to be
14 protected by the protective orders and, if the court grants the
15 petition, the protected person.

16 (3) "Protective order" means an order that includes any of the
17 following restraining orders, whether issued ex parte, after notice
18 and hearing, or in a judgment:

19 (A) An order enjoining a party from abusing, intimidating,
20 molesting, attacking, striking, stalking, threatening, sexually
21 assaulting, battering, harassing, telephoning, including, but not
22 limited to, making annoying telephone calls as described in Section
23 653m of the Penal Code, destroying personal property, contacting,
24 either directly or indirectly, by mail or otherwise, or coming within
25 a specified distance of, or disturbing the peace of, the petitioner,
26 and, in the discretion of the court, on a showing of good cause, of
27 other named family or household members or a conservator, if
28 any, of the petitioner.

29 (B) An order excluding a party from the petitioner's residence
30 or dwelling, except that this order shall not be issued if legal or
31 equitable title to, or lease of, the residence or dwelling is in the
32 sole name of the party to be excluded, or is in the name of the party
33 to be excluded and any other party besides the petitioner.

34 (C) An order enjoining a party from specified behavior that the
35 court determines is necessary to effectuate orders described in
36 subparagraph (A) or (B).

37 (4) "Respondent" means the person against whom the protective
38 orders are sought and, if the petition is granted, the restrained
39 person.

1 (c) An order may be issued under this section, with or without
2 notice, to restrain any person for the purpose of preventing a
3 recurrence of abuse, if a declaration shows, to the satisfaction of
4 the court, reasonable proof of a past act or acts of abuse of the
5 petitioning elder or dependent adult.

6 (d) Upon filing a petition for protective orders under this section,
7 the petitioner may obtain a temporary restraining order in
8 accordance with Section 527 of the Code of Civil Procedure, except
9 to the extent this section provides a rule that is inconsistent. The
10 temporary restraining order may include any of the protective
11 orders described in paragraph (3) of subdivision (b). However, the
12 court may issue an ex parte order excluding a party from the
13 petitioner's residence or dwelling only on a showing of all of the
14 following:

15 (1) Facts sufficient for the court to ascertain that the party who
16 will stay in the dwelling has a right under color of law to possession
17 of the premises.

18 (2) That the party to be excluded has assaulted or threatens to
19 assault the petitioner, other named family or household member
20 of the petitioner, or a conservator of the petitioner.

21 (3) That physical or emotional harm would otherwise result to
22 the petitioner, other named family or household member of the
23 petitioner, or a conservator of the petitioner.

24 (e) A request for the issuance of a temporary restraining order
25 without notice under this section shall be granted or denied on the
26 same day that the petition is submitted to the court, unless the
27 petition is filed too late in the day to permit effective review, in
28 which case the order shall be granted or denied on the next day of
29 judicial business in sufficient time for the order to be filed that day
30 with the clerk of the court.

31 (f) Within 21 days, or, if good cause appears to the court, 25
32 days, from the date that a request for a temporary restraining order
33 is granted or denied, a hearing shall be held on the petition. If no
34 request for temporary orders is made, the hearing shall be held
35 within 21 days, or, if good cause appears to the court, 25 days,
36 from the date that the petition is filed.

37 (g) The respondent may file a response that explains or denies
38 the alleged abuse.

39 (h) The court may issue, upon notice and a hearing, any of the
40 orders set forth in paragraph (3) of subdivision (b). The court may

1 issue, after notice and hearing, an order excluding a person from
2 a residence or dwelling if the court finds that physical or emotional
3 harm would otherwise result to the petitioner, other named family
4 or household member of the petitioner, or conservator of the
5 petitioner.

6 (i) (1) In the discretion of the court, an order issued after notice
7 and a hearing under this section may have a duration of not more
8 than five years, subject to termination or modification by further
9 order of the court either on written stipulation filed with the court
10 or on the motion of a party. These orders may be renewed upon
11 the request of a party, either for five years or permanently, without
12 a showing of any further abuse since the issuance of the original
13 order, subject to termination or modification by further order of
14 the court either on written stipulation filed with the court or on the
15 motion of a party. The request for renewal may be brought at any
16 time within the three months before the expiration of the order.

17 (2) The failure to state the expiration date on the face of the
18 form creates an order with a duration of three years from the date
19 of issuance.

20 (3) If an action is filed for the purpose of terminating or
21 modifying a protective order prior to the expiration date specified
22 in the order by a party other than the protected party, the party
23 who is protected by the order shall be given notice, pursuant to
24 subdivision (b) of Section 1005 of the Code of Civil Procedure,
25 of the proceeding by personal service or, if the protected party has
26 satisfied the requirements of Chapter 3.1 (commencing with
27 Section 6205) of Division 7 of Title 1 of the Government Code,
28 by service on the Secretary of State. If the party who is protected
29 by the order cannot be notified prior to the hearing for modification
30 or termination of the protective order, the court shall deny the
31 motion to modify or terminate the order without prejudice or
32 continue the hearing until the party who is protected can be
33 properly noticed and may, upon a showing of good cause, specify
34 another method for service of process that is reasonably designed
35 to afford actual notice to the protected party. The protected party
36 may waive his or her right to notice if he or she is physically
37 present in court and does not challenge the sufficiency of the notice.

38 (j) In a proceeding under this section, a support person may
39 accompany a party in court and, if the party is not represented by
40 an attorney, may sit with the party at the table that is generally

1 reserved for the party and the party's attorney. The support person
2 is present to provide moral and emotional support for a person
3 who alleges he or she is a victim of abuse. The support person is
4 not present as a legal adviser and may not provide legal advice.
5 The support person may assist the person who alleges he or she is
6 a victim of abuse in feeling more confident that he or she will not
7 be injured or threatened by the other party during the proceedings
8 if the person who alleges he or she is a victim of abuse and the
9 other party are required to be present in close proximity. This
10 subdivision does not preclude the court from exercising its
11 discretion to remove the support person from the courtroom if the
12 court believes the support person is prompting, swaying, or
13 influencing the party assisted by the support person.

14 (k) Upon the filing of a petition for protective orders under this
15 section, the respondent shall be personally served with a copy of
16 the petition, notice of the hearing or order to show cause, temporary
17 restraining order, if any, and any declarations in support of the
18 petition. Service shall be made at least five days before the hearing.
19 The court may, on motion of the petitioner or on its own motion,
20 shorten the time for service on the respondent.

21 (l) A notice of hearing under this section shall notify the
22 respondent that if he or she does not attend the hearing, the court
23 may make orders against him or her that could last up to five years.

24 (m) (1) The court may, upon the filing of a declaration by the
25 petitioner that the respondent could not be served within the time
26 required by statute, reissue an order previously issued and dissolved
27 by the court for failure to serve the respondent. The reissued order
28 shall remain in effect until the date set for the hearing.

29 (2) The reissued order shall state on its face the date of
30 expiration of the order.

31 (n) (1) If a respondent, named in an order issued under this
32 section after a hearing, has not been served personally with the
33 order but has received actual notice of the existence and substance
34 of the order through personal appearance in court to hear the terms
35 of the order from the court, no additional proof of service is
36 required for enforcement of the order.

37 (2) If the respondent named in a temporary restraining order is
38 personally served with the order and notice of hearing with respect
39 to a restraining order or protective order based on the temporary
40 restraining order, but the respondent does not appear at the hearing,

1 either personally or by an attorney, and the terms and conditions
2 of the restraining order or protective order issued at the hearing
3 are identical to the temporary restraining order, except for the
4 duration of the order, then the restraining order or protective order
5 issued at the hearing may be served on the respondent by first-class
6 mail sent to the respondent at the most current address for the
7 respondent that is available to the court.

8 (3) The Judicial Council form for temporary orders issued
9 pursuant to this subdivision shall contain a statement in
10 substantially the following form:

11
12 “If you have been personally served with a temporary restraining
13 order and notice of hearing, but you do not appear at the hearing
14 either in person or by a lawyer, and a restraining order that is the
15 same as this temporary restraining order except for the expiration
16 date is issued at the hearing, a copy of the order will be served on
17 you by mail at the following address: ____.

18 If that address is not correct or you wish to verify that the
19 temporary restraining order was converted to a restraining order
20 at the hearing without substantive change and to find out the
21 duration of that order, contact the clerk of the court.”

22
23 (o) (1) Information on any protective order relating to elder or
24 dependent adult abuse issued by a court pursuant to this section
25 shall be transmitted to the Department of Justice in accordance
26 with either paragraph (2) or (3).

27 (2) The court shall order the petitioner or the attorney for the
28 petitioner to deliver a copy of an order issued under this section,
29 or a reissuance, extension, modification, or termination of the
30 order, and any subsequent proof of service, by the close of the
31 business day on which the order, reissuance, extension,
32 modification, or termination was made, to each law enforcement
33 agency having jurisdiction over the residence of the petitioner, and
34 to any additional law enforcement agencies within the court’s
35 discretion as are requested by the petitioner.

36 (3) Alternatively, the court or its designee shall transmit, within
37 one business day, to law enforcement personnel all information
38 required under subdivision (b) of Section 6380 of the Family Code
39 regarding any order issued under this section, or a reissuance,
40 extension, modification, or termination of the order, and any

1 subsequent proof of service, by either one of the following
2 methods:

3 (A) Transmitting a physical copy of the order or proof of service
4 to a local law enforcement agency authorized by the Department
5 of Justice to enter orders into the California Law Enforcement
6 Telecommunications System (CLETS).

7 (B) With the approval of the Department of Justice, entering
8 the order or proof of service into CLETS directly.

9 (4) Each appropriate law enforcement agency shall make
10 available information as to the existence and current status of these
11 orders to law enforcement officers responding to the scene of
12 reported abuse.

13 (5) An order issued under this section shall, on request of the
14 petitioner, be served on the respondent, whether or not the
15 respondent has been taken into custody, by any law enforcement
16 officer who is present at the scene of reported abuse involving the
17 parties to the proceeding. The petitioner shall provide the officer
18 with an endorsed copy of the order and a proof of service, which
19 the officer shall complete and send to the issuing court.

20 (6) Upon receiving information at the scene of an incident of
21 abuse that a protective order has been issued under this section,
22 or that a person who has been taken into custody is the respondent
23 to that order, if the protected person cannot produce an endorsed
24 copy of the order, a law enforcement officer shall immediately
25 attempt to verify the existence of the order.

26 (7) If the law enforcement officer determines that a protective
27 order has been issued, but not served, the officer shall immediately
28 notify the respondent of the terms of the order and where a written
29 copy of the order can be obtained, and the officer shall at that time
30 also enforce the order. The law enforcement officer's verbal notice
31 of the terms of the order shall constitute service of the order and
32 is sufficient notice for the purposes of this section and for the
33 purposes of Section 273.6 of the Penal Code.

34 (p) Nothing in this section shall preclude either party from
35 representation by private counsel or from appearing on the party's
36 own behalf.

37 (q) There is no filing fee for a petition, response, or paper
38 seeking the reissuance, modification, or enforcement of a protective
39 order filed in a proceeding brought pursuant to this section.

1 (r) Pursuant to paragraph (4) of subdivision (b) of Section 6103.2
2 of the Government Code, a petitioner shall not be required to pay
3 a fee for law enforcement to serve an order issued under this
4 section.

5 (s) The prevailing party in any action brought under this section
6 may be awarded court costs and attorney's fees, if any.

7 (t) (1) A person subject to a protective order under this section
8 shall not own, possess, purchase, receive, or attempt to receive a
9 firearm or ammunition while the protective order is in effect.

10 (2) The court shall order a person subject to a protective order
11 issued under this section to relinquish any firearms he or she owns
12 or possesses pursuant to Section 527.9 of the Code of Civil
13 Procedure.

14 (3) Every person who owns, possesses, purchases, or receives,
15 or attempts to purchase or receive a firearm or ammunition while
16 subject to a protective order issued under this section is punishable
17 pursuant to Section 29825 of the Penal Code.

18 (4) This subdivision shall not apply in a case in which the
19 protective order issued under this section was made solely on the
20 basis of financial abuse unaccompanied by force, threat,
21 harassment, intimidation, or any other form of abuse.

22 (u) Any willful disobedience of any temporary restraining order
23 or restraining order after hearing granted under this section is
24 punishable pursuant to Section 273.6 of the Penal Code.

25 (v) This section does not apply to any action or proceeding
26 governed by Title 1.6C (commencing with Section 1788) of Part
27 4 of Division 3 of the Civil Code, Chapter 3 (commencing with
28 Section 525) of Title 7 of Part 2 of the Code of Civil Procedure,
29 or Division 10 (commencing with Section 6200) of the Family
30 Code. Nothing in this section shall preclude a petitioner's right to
31 use other existing civil remedies.

32 (w) The Judicial Council shall develop forms, instructions, and
33 rules relating to matters governed by this section. The petition and
34 response forms shall be simple and concise, and their use by parties
35 in actions brought pursuant to this section shall be mandatory.

36 (x) This section shall become inoperative on July 1, 2016, and,
37 as of January 1, 2017, is repealed, unless a later enacted statute,
38 that becomes operative on or before January 1, 2017, deletes or
39 extends the dates on which it becomes inoperative and is repealed.

1 ~~SEC. 2.~~

2 SEC. 4. Section 15657.03 is added to the Welfare and
3 Institutions Code, to read:

4 15657.03. (a) (1) An elder or dependent adult who has suffered
5 abuse may seek protective orders as provided in this section.

6 (2) A petition may be brought on behalf of an abused elder or
7 dependent adult by a conservator or a trustee of the elder or
8 dependent adult, ~~a county adult protective services agency or public~~
9 ~~conservator in a case in which an elder or dependent adult has been~~
10 ~~identified as lacking capacity and a conservatorship is being sought,~~
11 an attorney-in-fact of an elder or dependent adult who acts within
12 the authority of the power of attorney, a person appointed as a
13 guardian ad litem for the elder or dependent adult, or other person
14 legally authorized to seek the relief.

15 (3) (A) *A petition under this section may be brought on behalf*
16 *of an elder or dependent adult by a county adult protective services*
17 *agency in any of the following circumstances:*

18 (i) *If there is reasonable cause to believe an elder or dependent*
19 *adult is in imminent danger of becoming, or has become, the victim*
20 *of a crime, as provided under Chapter 13 (commencing with*
21 *Section 368) of Title 9 of Part 1 of the Penal Code, and has an*
22 *impaired ability to appreciate and understand the circumstances*
23 *that place him or her at risk of harm.*

24 (ii) *If the elder or dependent adult has suffered abuse as defined*
25 *in subdivision (b) and has an impaired ability to appreciate and*
26 *understand the circumstances that place him or her at risk of harm.*

27 (iii) *If the elder or dependent adult has provided written*
28 *authorization to a county adult protective services agency to act*
29 *on his or her behalf.*

30 (B) *In the case of a petition filed pursuant to clause (i) or (ii)*
31 *of subparagraph (A) by a county adult protective services agency,*
32 *a referral shall be made to the public guardian consistent with*
33 *Section 2920 of the Probate Code prior to or concurrent with the*
34 *filing of the petition.*

35 (C) *A county adult protective services agency shall be subject*
36 *to any confidentiality restrictions as otherwise apply to its activities*
37 *under law and shall only disclose those facts as necessary to*
38 *establish reasonable cause for the filing of the petition and as may*
39 *be requested by the court in determining whether to issue an order*
40 *under this section.*

(b) For the purposes of this section:

(1) “Abuse” has the meaning set forth in Section 15610.07.

(2) “Conservator” means the legally appointed conservator of the person or estate of the petitioner, or both.

(3) “Petitioner” means the elder or dependent adult to be protected by the protective orders and, if the court grants the petition, the protected person.

(4) “Protective order” means an order that includes any of the following restraining orders, whether issued ex parte, after notice and hearing, or in a judgment:

(A) An order enjoining a party from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of, the petitioner, and, in the discretion of the court, on a showing of good cause, of other named family or household members or a conservator, if any, of the petitioner.

(B) An order excluding a party from the petitioner’s residence or dwelling, except that this order shall not be issued if legal or equitable title to, or lease of, the residence or dwelling is in the sole name of the party to be excluded, or is in the name of the party to be excluded and any other party besides the petitioner.

(C) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in subparagraph (A) or (B).

(5) “Respondent” means the person against whom the protective orders are sought and, if the petition is granted, the restrained person.

(c) An order may be issued under this section, with or without notice, to restrain any person for the purpose of preventing a recurrence of abuse, if a declaration shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse of the petitioning elder or dependent adult.

(d) Upon filing a petition for protective orders under this section, the petitioner may obtain a temporary restraining order in accordance with Section 527 of the Code of Civil Procedure, except to the extent this section provides a rule that is inconsistent. The

1 temporary restraining order may include any of the protective
2 orders described in paragraph (4) of subdivision (b). However, the
3 court may issue an ex parte order excluding a party from the
4 petitioner's residence or dwelling only on a showing of all of the
5 following:

6 (1) Facts sufficient for the court to ascertain that the party who
7 will stay in the dwelling has a right under color of law to possession
8 of the premises.

9 (2) That the party to be excluded has assaulted or threatens to
10 assault the petitioner, other named family or household member
11 of the petitioner, or a conservator of the petitioner.

12 (3) That physical or emotional harm would otherwise result to
13 the petitioner, other named family or household member of the
14 petitioner, or a conservator of the petitioner.

15 (e) A request for the issuance of a temporary restraining order
16 without notice under this section shall be granted or denied on the
17 same day that the petition is submitted to the court, unless the
18 petition is filed too late in the day to permit effective review, in
19 which case the order shall be granted or denied on the next day of
20 judicial business in sufficient time for the order to be filed that day
21 with the clerk of the court.

22 (f) Within 21 days, or, if good cause appears to the court, 25
23 days, from the date that a request for a temporary restraining order
24 is granted or denied, a hearing shall be held on the petition. If no
25 request for temporary orders is made, the hearing shall be held
26 within 21 days, or, if good cause appears to the court, 25 days,
27 from the date that the petition is filed.

28 (g) The respondent may file a response that explains or denies
29 the alleged abuse.

30 (h) The court may issue, upon notice and a hearing, any of the
31 orders set forth in paragraph (4) of subdivision (b). The court may
32 issue, after notice and hearing, an order excluding a person from
33 a residence or dwelling if the court finds that physical or emotional
34 harm would otherwise result to the petitioner, other named family
35 or household member of the petitioner, or conservator of the
36 petitioner.

37 (i) (1) In the discretion of the court, an order issued after notice
38 and a hearing under this section may have a duration of not more
39 than five years, subject to termination or modification by further
40 order of the court either on written stipulation filed with the court

1 or on the motion of a party. These orders may be renewed upon
2 the request of a party, either for five years or permanently, without
3 a showing of any further abuse since the issuance of the original
4 order, subject to termination or modification by further order of
5 the court either on written stipulation filed with the court or on the
6 motion of a party. The request for renewal may be brought at any
7 time within the three months before the expiration of the order.

8 (2) The failure to state the expiration date on the face of the
9 form creates an order with a duration of three years from the date
10 of issuance.

11 (3) If an action is filed for the purpose of terminating or
12 modifying a protective order prior to the expiration date specified
13 in the order by a party other than the protected party, the party
14 who is protected by the order shall be given notice, pursuant to
15 subdivision (b) of Section 1005 of the Code of Civil Procedure,
16 of the proceeding by personal service or, if the protected party has
17 satisfied the requirements of Chapter 3.1 (commencing with
18 Section 6205) of Division 7 of Title 1 of the Government Code,
19 by service on the Secretary of State. If the party who is protected
20 by the order cannot be notified prior to the hearing for modification
21 or termination of the protective order, the court shall deny the
22 motion to modify or terminate the order without prejudice or
23 continue the hearing until the party who is protected can be
24 properly noticed and may, upon a showing of good cause, specify
25 another method for service of process that is reasonably designed
26 to afford actual notice to the protected party. The protected party
27 may waive his or her right to notice if he or she is physically
28 present in court and does not challenge the sufficiency of the notice.

29 (j) In a proceeding under this section, a support person may
30 accompany a party in court and, if the party is not represented by
31 an attorney, may sit with the party at the table that is generally
32 reserved for the party and the party's attorney. The support person
33 is present to provide moral and emotional support for a person
34 who alleges he or she is a victim of abuse. The support person is
35 not present as a legal adviser and may not provide legal advice.
36 The support person may assist the person who alleges he or she is
37 a victim of abuse in feeling more confident that he or she will not
38 be injured or threatened by the other party during the proceedings
39 if the person who alleges he or she is a victim of abuse and the
40 other party are required to be present in close proximity. This

1 subdivision does not preclude the court from exercising its
2 discretion to remove the support person from the courtroom if the
3 court believes the support person is prompting, swaying, or
4 influencing the party assisted by the support person.

5 (k) Upon the filing of a petition for protective orders under this
6 section, the respondent shall be personally served with a copy of
7 the petition, notice of the hearing or order to show cause, temporary
8 restraining order, if any, and any declarations in support of the
9 petition. Service shall be made at least five days before the hearing.
10 The court may, on motion of the petitioner or on its own motion,
11 shorten the time for service on the respondent.

12 (l) A notice of hearing under this section shall notify the
13 respondent that if he or she does not attend the hearing, the court
14 may make orders against him or her that could last up to five years.

15 (m) (1) The court may, upon the filing of a declaration by the
16 petitioner that the respondent could not be served within the time
17 required by statute, reissue an order previously issued and dissolved
18 by the court for failure to serve the respondent. The reissued order
19 shall remain in effect until the date set for the hearing.

20 (2) The reissued order shall state on its face the date of
21 expiration of the order.

22 (n) (1) If a respondent, named in an order issued under this
23 section after a hearing, has not been served personally with the
24 order but has received actual notice of the existence and substance
25 of the order through personal appearance in court to hear the terms
26 of the order from the court, no additional proof of service is
27 required for enforcement of the order.

28 (2) If the respondent named in a temporary restraining order is
29 personally served with the order and notice of hearing with respect
30 to a restraining order or protective order based on the temporary
31 restraining order, but the respondent does not appear at the hearing,
32 either personally or by an attorney, and the terms and conditions
33 of the restraining order or protective order issued at the hearing
34 are identical to the temporary restraining order, except for the
35 duration of the order, then the restraining order or protective order
36 issued at the hearing may be served on the respondent by first-class
37 mail sent to the respondent at the most current address for the
38 respondent that is available to the court.

1 (3) The Judicial Council form for temporary orders issued
2 pursuant to this subdivision shall contain a statement in
3 substantially the following form:

4
5 “If you have been personally served with a temporary restraining
6 order and notice of hearing, but you do not appear at the hearing
7 either in person or by a lawyer, and a restraining order that is the
8 same as this temporary restraining order except for the expiration
9 date is issued at the hearing, a copy of the order will be served on
10 you by mail at the following address: ____.

11 If that address is not correct or you wish to verify that the
12 temporary restraining order was converted to a restraining order
13 at the hearing without substantive change and to find out the
14 duration of that order, contact the clerk of the court.”

15
16 (o) (1) Information on any protective order relating to elder or
17 dependent adult abuse issued by a court pursuant to this section
18 shall be transmitted to the Department of Justice in accordance
19 with either paragraph (2) or (3).

20 (2) The court shall order the petitioner or the attorney for the
21 petitioner to deliver a copy of an order issued under this section,
22 or a reissuance, extension, modification, or termination of the
23 order, and any subsequent proof of service, by the close of the
24 business day on which the order, reissuance, extension,
25 modification, or termination was made, to each law enforcement
26 agency having jurisdiction over the residence of the petitioner, and
27 to any additional law enforcement agencies within the court’s
28 discretion as are requested by the petitioner.

29 (3) Alternatively, the court or its designee shall transmit, within
30 one business day, to law enforcement personnel all information
31 required under subdivision (b) of Section 6380 of the Family Code
32 regarding any order issued under this section, or a reissuance,
33 extension, modification, or termination of the order, and any
34 subsequent proof of service, by either one of the following
35 methods:

36 (A) Transmitting a physical copy of the order or proof of service
37 to a local law enforcement agency authorized by the Department
38 of Justice to enter orders into the California Law Enforcement
39 Telecommunications System (CLETS).

1 (B) With the approval of the Department of Justice, entering
2 the order or proof of service into CLETS directly.

3 (4) Each appropriate law enforcement agency shall make
4 available information as to the existence and current status of these
5 orders to law enforcement officers responding to the scene of
6 reported abuse.

7 (5) An order issued under this section shall, on request of the
8 petitioner, be served on the respondent, whether or not the
9 respondent has been taken into custody, by any law enforcement
10 officer who is present at the scene of reported abuse involving the
11 parties to the proceeding. The petitioner shall provide the officer
12 with an endorsed copy of the order and a proof of service, which
13 the officer shall complete and send to the issuing court.

14 (6) Upon receiving information at the scene of an incident of
15 abuse that a protective order has been issued under this section,
16 or that a person who has been taken into custody is the respondent
17 to that order, if the protected person cannot produce an endorsed
18 copy of the order, a law enforcement officer shall immediately
19 attempt to verify the existence of the order.

20 (7) If the law enforcement officer determines that a protective
21 order has been issued, but not served, the officer shall immediately
22 notify the respondent of the terms of the order and where a written
23 copy of the order can be obtained, and the officer shall at that time
24 also enforce the order. The law enforcement officer's verbal notice
25 of the terms of the order shall constitute service of the order and
26 is sufficient notice for the purposes of this section and for the
27 purposes of Section 273.6 of the Penal Code.

28 (p) Nothing in this section shall preclude either party from
29 representation by private counsel or from appearing on the party's
30 own behalf.

31 (q) There is no filing fee for a petition, response, or paper
32 seeking the reissuance, modification, or enforcement of a protective
33 order filed in a proceeding brought pursuant to this section.

34 (r) Pursuant to paragraph (4) of subdivision (b) of Section 6103.2
35 of the Government Code, a petitioner shall not be required to pay
36 a fee for law enforcement to serve an order issued under this
37 section.

38 (s) The prevailing party in any action brought under this section
39 may be awarded court costs and attorney's fees, if any.

1 (t) (1) A person subject to a protective order under this section
2 shall not own, possess, purchase, receive, or attempt to receive a
3 firearm or ammunition while the protective order is in effect.

4 (2) The court shall order a person subject to a protective order
5 issued under this section to relinquish any firearms he or she owns
6 or possesses pursuant to Section 527.9 of the Code of Civil
7 Procedure.

8 (3) Every person who owns, possesses, purchases, or receives,
9 or attempts to purchase or receive a firearm or ammunition while
10 subject to a protective order issued under this section is punishable
11 pursuant to Section 29825 of the Penal Code.

12 (4) This subdivision shall not apply in a case in which the
13 protective order issued under this section was made solely on the
14 basis of financial abuse unaccompanied by force, threat,
15 harassment, intimidation, or any other form of abuse.

16 (u) ~~In a proceeding based on a filing of a petition by a county~~
17 ~~adult protective services agency or public conservator in a case in~~
18 ~~which an elder or dependent adult has been identified as lacking~~
19 ~~capacity and a conservatorship is sought, brought under paragraph~~
20 ~~(3) of subdivision (a), all of the following apply:~~

21 (1) Upon the filing of a petition for a protective order, the elder
22 or dependent adult on whose behalf the petition has been filed
23 shall receive a copy of the petition, a notice of the hearing, and
24 any declarations submitted in support of the petition. The elder or
25 dependent adult shall receive this information at least five days
26 before the hearing. The court may, on motion of the petitioner or
27 on its own motion, shorten the time for provision of this
28 information to the elder or dependent adult.

29 (2) ~~The adult protective services agency or public conservator~~
30 ~~shall make reasonable efforts to assist the elder or dependent adult~~
31 ~~to attend the hearing and provide testimony to the court, if he or~~
32 ~~she wishes to do so. If the elder or dependent adult does not attend~~
33 ~~the hearing, the agency or public conservator shall provide~~
34 ~~information to the court at the hearing regarding the reasons why~~
35 ~~the elder or dependent adult is not in attendance.~~

36 (3) *Upon the filing of a petition for a protective order and upon*
37 *issuance of an order granting the petition, the county adult*
38 *protective services agency shall take all reasonable steps to provide*
39 *for the safety of the elder or dependent adult, pursuant to Chapter*
40 *13 (commencing with Section 15750), which may include, but is*

1 *not limited to, locating alternative accommodations for the elder*
2 *or dependent adult, if needed.*

3 (v) Any willful disobedience of any temporary restraining order
4 or restraining order after hearing granted under this section is
5 punishable pursuant to Section 273.6 of the Penal Code.

6 (w) This section does not apply to any action or proceeding
7 governed by Title 1.6C (commencing with Section 1788) of Part
8 4 of Division 3 of the Civil Code, Chapter 3 (commencing with
9 Section 525) of Title 7 of Part 2 of the Code of Civil Procedure,
10 or Division 10 (commencing with Section 6200) of the Family
11 Code. Nothing in this section shall preclude a petitioner's right to
12 use other existing civil remedies.

13 (x) The Judicial Council shall develop forms, instructions, and
14 rules relating to matters governed by this section. The petition and
15 response forms shall be simple and concise, and shall be used by
16 parties in actions brought pursuant to this section.

17 (y) This section shall become operative on July 1, 2016.